HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No.….. of 2001 (SS)

Jai Ballabh vs. State of Uttaranchal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 10.12.2003

Initial of Judge

Lodge No. 512/2003

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No….. of 2003 (SS)

Jai Ballabh s/o Sri Gopal Dutt Bhatt
R/o Village Khunoli, Post Bhatuda,
District Bageshwar ……. Petitioner

Versus

State of Uttaranchal & others …...……. Respondents

Sri Ganesh Kandpal, Advocate for the petitioner
Standing counsel for the respondents.

Dated:-10.12.2003

Hon'ble Rajesh Tandon, J.

Rule. Respondents waive service.

Heard the learned counsel for the parties at length.

The petitioner has filed the present writ petition for the issue of a writ order or direction in the nature of mandamus directing the respondents to treat the petitioner as regular employee of the Forest department and pay him salary as it is being given to the regular employees of the department in the corresponding cadre.

Brief facts giving rise to the present writ petition are that the petitioner was appointed on daily wages on 1.6.1975 and since then he is continuously working in the Forest Department.

The petitioner has stated that State of Uttaranchal has consitituted a Regularisation Committee for regularisation of daily wager employees of the Forest Department who have completed 10 years of service as such. The Regularisation Committed considered the list of the candidates for their appointment on the posts of Forest Guards in the Forest Department. In the list of candidates for consideration before the Regularisation Committee, the name of the petitioner was placed at serial number 3. The petitioner has come to know by letter dated 16.9.2003 of the D.F.O. Bageshwar addressed to the Range Officers of various ranges that the petitioner was not selected for the post of Forest Guard by the Regularisation Committee as he was shown absent in the year 1999 with effect from April 1999 to November 1999.

The petitioner has alleged that he was appointed on 1st June 1975 and he is continuously working for more than 28 years in the Forest Department on daily wages. He cannot be denied regularisation merely on the ground of absence for some period in a particular year.

The petitioner has also stated that he has made a representation on 22.10.2003 before the Regularisation Committee, Dehradun but the same has not been decided as yet.

The Apex Court has held in the case of Daily Rated Casual Labour vs. Union of India (1998) 1 SCC 122 as under:

"India is a socialist republic. It implies the existence of certain important obligation which the State has to discharge. The right to work, the right to free choice of employment the right to just and favourable conditions of work, the right to protection against unemployment, the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources. Willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly

observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and governmental agencies in particular should not allow the workers to remain as casual labourers or temporary employees for an unreasonable long period of time."

The learned counsel for the petitioner has also referred the judgment of Apex Court in the case of State of U.P. & others vs. Putti Lal 2002(1) E.L.C. 524 (SC). In that case it has been held that daily wagers would be entitled to draw at the minimum of the pay scale being received by their counter part in the Government and the question of their regular absorption will obviously be dealt with in accordance with the statutory rule. The order is mutatis mutandis apply to the State of Uttaranchal as held by the Apex Court as under:

"So far as the State of Uttaranchal is concerned, a scheme for regularisation of daily workers has been produced before us which prima facie does not appear to be objectionable excepting the provision regarding qualification for regularisation. Be it sated that the qualification essential for being regularised would be the qualification as was relevant on the date of particular employee was taken in as a daily wager and not the qualification which is being

fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence for the necessity for having such posts. But still it would not be open for the court to indicate as to how many posts would be created for the absorption of these daily wages workers. Needless to mention that the Appropriate Authority will consider the case of these daily wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counter part in the Government until his services are regularised and he is given regular scale of pay."

After the judgment of the Apex Court, Uttaranchal Government has farmed Recruitment Rules of 2003 in accordance with the directions of the Apex Court known as Regularisation (On Group "D" Posts) of Daily Wages Appointment Rules, 2003. The criteria for regularisation has been mentioned under Rule 4 (1), which reads as under:

(1) *Any person who:-*

(a) was directly appointed on daily wages basis on a Group "D" post in the Forest Department under

Government service before June 29, 1991 and in continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in the Forest Department in Group "D" post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders."

Letter dated 16.9.2003, of D.F.O. Bageshwar reveals that the respondents have refused regularisation of the petitioner merely on the technical grounds without application of mind ignoring the judgment of Apex Court in the case of State of U.P. vs. Putti Lal with regard to regularisation. The said order, therefore, cannot be allowed to stand.

In view of the facts and circumstances mentioned above, the respondents are directed to consider the regularisation of the petitioner in accordance with Regularisation (On Group "D" posts) of Daily

Wages appointment Rules, 2003, within a period of six weeks after receipt of the certified copy of the order.

A writ of certiorari is issued quashing the order-dated 16.9.2003 passed by respondent no.2 so far it relates to the petitioner.

The writ petition is accordingly allowed. No order as to costs.

10.12.2003 **(Rajesh Tandon, J.)**
Dhyani